IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1408 of 1980

The Bombay Port Trust of Bombay .. Plaintiff

versus

M/s.Sepulchare Bros.(I) Ltd. .. Defendant

...

Mr.U.J. Makhija i/b Mulla & Mulla for the plaintiff

Mr.S. Sen i/b Udwadia & Udeshi for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 12th February 2007.

JUDGEMENT:-

1. The defendant tenders affidavit of Mr.Aspi Driver dated 9th February 2007. In the affidavit the defendant has admitted the liability to pay the amount claimed in the suit and has raised the dispute only regarding the interest from the date of the suit.

2. Counsel for the plaintiff states that in

view of the fact that the plaintiff has admitted the liability to pay the amount claimed in the suit, plaintiff does not want to adduce oral or documentary evidence. Statement is accepted. Counsel for the defendant also states that the defendant does not wish to adduce any evidence.

3. Heard the counsel for the parties.

4. The plaintiff has filed this suit for recovery of the money due and payable by the defendant on account of wharfage and demurrage as stated in Exhibit-A to the plaint. As the defendant has admitted the liability to pay the amount claimed in the suit but has claimed relief in respect of the interest from the suit the issues are modified and reframed as follows:-

Issue No.1. Whether the defendant is liable to pay to the plaintiff the amount as mentioned in Exhibit-A to the plaint?

Issue No.2 Whether the defendant is liable to pay interest after filing of the suit? If yes, at what rate?

Issue No.3 What order?

My answer to the issues are as follows:

Issue No.1. Yes.

Issue No.2 Yes. The defendant is liable to pay interest at 6% p.a. from the date of the suit.

Issue No.3 As detailed below

R E A S O N S

5. The defendant has admitted the liability to pay the amount claimed in the suit in the affidavit of Mr.Aspi Driver. Counsel for the defendant submits that in fact the defendant had tendered the said amount by bank pay order which was not accepted by the plaintiff. As the liability is admitted, I hold that the plaintiff is entitled to the decree for the sum claimed.

6. As regards the interes from the date of the

suit, section 34 of the Code of Civil Procedure reads thus:

> **34. Interest** (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent, per annum, as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:
>
> . Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.
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> (2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.

7. While passing a decree for payment of money, court is entitled to award interest at such rate as it deems reasonable from the date of institution of the suit to the date of decree. Proviso to sub-section (1) of section 34 specifies that in respect of a commercial transaction, the rate of interest may exceed 6% but shall not exceed contractual rate of interest and where no contractual rate is agreed, the rate at which monies are lent or advanced by nationalised banks in respect of commercial transactions.

8. In the present case, the transaction appears to be a commercial transaction. Counsel for the plaintiff therefore submits that the case is covered by the proviso and the rate of interest can exceed 6% p.a. There was no contract to pay interest and therefore the interest can be granted upto the rate of interest at which monies are lent or advanced by nationalised banks in relation to commercial transactions. The plaintiff, who claims benefit of the proviso has not adduced any evidence to show what was the rate at which monies were lent or advanced by nationalised banks at the relevant time. It is a

matter of common knowledge that rate of interest charged by the commercial banks on loans for imports or exports is different than the rate of interest charged for other commercial transactions. In the absence of any evidence regarding the rate of interest charged by the nationalised banks for commercial transactions including the rate of interest charged for import or export of commodities, I am inclined to award interest at 6% p.a. which is the statutory rate of interest fixed under section 34 of the Code of Civil Procedure. Hence, I hold that the defendant is liable to pay interest only at 6% p.a.

9. Hence, suit of the plaintiff is decreed as follows:-

. The defendant shall pay to the plaintiff a sum of Rs.1,79,226.75 together with interest thereon at 6% p.a. from the date of the suit till 21st December 2005 when the money was tendered to the defendant by pay order. The amount shall be within six weeks. The parties shall bear their own costs.

D.G. KARNIK, J